

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARD OF TRUSTEES OF THE
EMPLOYEE PAINTERS' TRUST; BOARD
OF TRUSTEES OF THE WESTERN
WASHINGTON PAINTERS DEFINED
CONTRIBUTION PENSION TRUST;
BOARD OF TRUSTEES OF THE DISTRICT
COUNCIL NO. 5 APPRENTICESHIP AND
TRAINING TRUST FUND; BOARD OF
TRUSTEES OF THE INTERNATIONAL
PAINTERS AND ALLIED TRADES
INDUSTRY PENSION FUND; BOARD OF
TRUSTEES OF THE FINISHING TRADES
INSTITUTE; THE PAINTERS AND ALLIED
TRADES LABOR-MANAGEMENT
COOPERATION INITIATIVE; WESTERN
WASHINGTON SIGNATORY PAINTING
EMPLOYERS ASSOCIATION;
NORTHWEST WALL 7 CEILING
CONTRACTORS ASSOCIATION;
INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES DISTRICT
COUNCIL NO. 5,

Plaintiffs,

v.

MARIN BROS., INC., an Illinois corporation;
ABEL MARIN, an individual; JENNIFER
GARCIA, an individual; DOES & ROES I-X,

Defendants.

Case No.: 2:23-cv-00483-TL

**THIRD STIPULATION AND ORDER TO
STAY PROCEEDINGS**

Noting Date: October 14, 2024

1 The Plaintiffs, Board of Trustees of The Employee Painters' Trust, *et al.* (collectively
2 the "Plaintiffs"), and Defendants Marin Bros., Inc., Abel Marin, and Jennifer Garcia
3 (collectively the "Defendants") (Plaintiffs and Defendants are collectively referred to herein as
4 the "Parties"), each acting by and through their undersigned counsel, respectfully file this
5 Stipulation to Stay Proceedings. This Stipulation is the Parties' third request to stay the
6 proceedings and is made for cause and not for the purpose of delay. This Stipulation is made
7 with respect to the following:

8 1. The Court issued an Order Setting Bench Trial Date and Related Dates on
9 October 27, 2023 [ECF No. 17]. The Court has since issued two orders granting the Parties'
10 Stipulated Motion to Extend Deadlines on May 7, 2024 and July 23, 2024, the latest of which
11 stayed the proceedings and all unexpired deadlines to November 3, 2024 [ECF Nos. 24, 28,
12 31, 33].

13 2. This case centers on alleged fringe benefit contribution payment obligations
14 arising from Collective Bargaining Agreements ("CBA") between the International Union of
15 Painters and Allied Trades District Council No. 5 ("Union") and Defendant Marin Bros., Inc.
16 ("Marin Bros").

17 3. The Plaintiffs, as employee benefit trust funds governed by the Employee
18 Retirement Income Security Act ("ERISA"), have alleged the right to be paid certain fringe
19 benefit contributions and related damages for work performed by Marin Bros' employees
20 pursuant to the terms of the CBA.

21 4. The Plaintiffs alleged in the Complaint [ECF No. 1] the right to perform a
22 payroll compliance review (audit) of Marin Bros' payroll and related records to determine the
23 extent of contributions of contributions owed to the Plaintiffs. *See Cent. States, Se. & Sw.*
24 *Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 573-74 (1985) (discussing the role
25 of a payroll auditor in determining unpaid contributions).

26 5. Since the filing of the Complaint and since the Court's Orders to Stay

1 Proceedings, the parties continued to engage in diligent discovery, have worked together to
2 avoid any court intervention of discovery issues, and have cooperated with sharing documents
3 and information so that an audit of Marin Bros' records could be performed by a professional
4 accounting firm engaged by the Plaintiffs.

5 6. In the parties' last stipulation and request to stay proceedings, the parties noted
6 how Plaintiffs' auditor had completed a draft audit for the period of January 1, 2023 through
7 September 30, 2023 ("Second Audit Period"). Defendants believe that this case involved
8 potential mistakes in payments for contributions either (1) not owed to Plaintiffs or (2) covered
9 in Plaintiffs' scope but accidentally paid to another entity. Defendants required additional time
10 to obtain and gather additional documents regarding its payroll and payment of contributions
11 and for Defendants' separate professional accounting firm to review and prepare a report for
12 the Second Audit Period.

13 7. Since then, Defendants have been delayed in obtaining substantive information
14 in part due to technological issues preventing access to some documentation and, in turn,
15 Defendants are providing information to Plaintiffs on October 18, 2024, so that the parties can
16 further assess the claims and meaningfully prepare for settlement discussions.

17 8. The parties also expect that they would soon have competing audit reports that
18 would need to be reviewed and evaluated before discovery in this case can continue.

19 9. Additionally, the Parties hope to engage in meaningful settlement negotiations
20 once final audit results are issued by each auditor. The Parties are committed to their ongoing
21 obligation to explore settlement options in this case.

22 10. The Parties agree that a sixty (60) day stay of proceedings is warranted due to
23 the need to complete the audits and to allow for discussion of the results of the audits and
24 potential settlement.

25 11. This Stipulation is made to avoid unnecessary expenditure of resources in
26 litigation and is not intended to delay or for any improper purpose.

1 12. Accordingly, the Parties by and through their undersigned counsel, stipulate
2 and agree, subject to the Court's approval, that these proceedings and all unexpired deadlines
3 set forth in the Court's February 5, 2024 Order [ECF No. 24] shall be stayed an additional
4 sixty (60) days to January 2, 2025.

5 13. No later than two weeks prior to the expiration of the stay, December 19, 2024,
6 the Parties will meet and confer and file a joint status report to update the Court on the status
7 of the audits, settlement, and, if not settled, a schedule for how the Parties intend to complete
8 discovery.

9 DATED: October 14, 2024.

10 CHRISTENSEN JAMES & MARTIN

BUCHALTER

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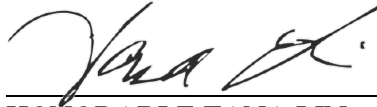
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ORDER

Good Cause Appearing, in accordance with the foregoing Stipulation, these proceedings and all unexpired deadlines set forth in the Court's February 5, 2024 Order [ECF No. 24] and shall be stayed for an additional sixty (60) days to January 2, 2025. No later than two weeks prior to the expiration of the stay, December 19, 2024, the Parties will meet and confer and file a joint status report to update the Court on the status of the audits, settlement, and, if not settled, a schedule for how the Parties intend to complete discovery.

//

DATED this 15th day of October, 2024.



HONORABLE TANA LIN
United States District Judge

Presented by:

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the United States of America that on October 14, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will automatically generate a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system and are listed below as follows:

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by:

- ☒ by CM/ECF
- ☒ by Electronic Mail

/s/Marci L. Brandt
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